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RISK UPDATE is available electronically only. To subscribe and receive a free e-copy directly into your inbox, email us at info@legalrisk.co.uk. Alternatively download it from www.legalrisk.co.uk

The Legal Risk App

Our new app for iPhone, Blackberry and Android provides thought leaders, risk predictions and hot-off-the-press and frequent updates for a minimal subscription. We are aiming to provoke thought on what is new and what is coming next in law firm risk and compliance, and to do so far more frequently than we can do through Risk Update. You can get a free 7 day trial on Apple devices and a 30 day free trial on Blackberry and Android by downloading it in your app store.



Our new website

A wealth of practical information will be found on our new website with resources on anti-money laundering, conflicts and successor practices as well as a large number of articles and back issues of Risk Update.

www.legalrisk.co.uk

Professional Indemnity

The SRA Chief Executive's report to the board meeting on 21 January 2015 says 'We are also drawing up proposals for a further consultation on Professional Indemnity Insurance and Compensation arrangements. Currently, we are considering the scope of the proposed changes, the available evidence and the appropriate timescales for consultation.'

We will maintain a keen interest. The Legal Services Board rejected the SRA's application last year to reduce the limit of indemnity to £500,000 for lack of evidence. It has become apparent that those considering the application were unaware that the proposed limit of £500,000 would have included claimants' costs. In a contested case that might easily have halved the amount available to compensate a claimant.

We will post further comment on the Legal Risk app as the consultation process develops. The Gazette reported on 19 January 2015 that of the firms seeking to renew insurance on 1 October 2014, approximately 90 per cent of the profession, only 49 firms failed to obtain terms. Though there are no longer any official statistics, we believe there was a substantial reduction in the dependency on unrated cover. This is to be welcomed, as we are advising solicitors facing significant liabilities as a result of insurer insolvency, and in particular we are dealing with issues over eligibility for Financial Services Compensation Scheme applications.

Putting aside the 49, most of the 10% of firms who did not renew in October 2014 will be renewing in or around March 2015. There will be minor changes to the line-up of insurers but we are not anticipating any particular problems. For an article by Frank Maher on lessons learned from the October renewal see our [website](#).

Accountants' Reports

Partners are responsible for filing their accountants' reports on time but in practice most leave it to their accountants. Failure to file the accountant's report means that Regulation 3 of the SRA Practising Regulations 2011 applies. Where Regulation 3 applies, the SRA has a discretion whether or not to renew practising certificates. It has a significant practical knock-on, in that a separate application is required for each practising certificate. The firm cannot seek a bulk renewal, and there are additional fees.

A recent case involved a firm who understood from communications with their accountants that the latter had filed the report when in fact they had not. The only safe course is for the firm to ask the accountants for a copy of the receipt from the SRA, and otherwise file a copy itself.



Anti-money laundering and financial crime

Progress is being made on the Fourth EU Anti-Money Laundering Directive. Agreement has been reached on beneficial ownership data. Full access to company beneficial ownership data will be granted to law enforcement and relevant government bodies, with partial access to the public such as investigative journalists and NGOs if they can prove a legitimate interest. Trust information will be available only to government bodies.

The Money Laundering (Amendment) Regulations 2015 provide for the Treasury's appointment of the Chartered Institute of Legal Executives as an anti-money laundering supervisory authority and The Chartered Institute of Public Finance and Accountancy has been omitted as a supervisory authority.

We have been advising an increasing number of firms on risk assessments which will be required under the Directive. We are also advising a firm which the SRA is seeking to fine for inadequate risk assessment in the past.

Details of these events and further information and resources on anti-money laundering and financial crime can be found on our website. Further material will also be found in the chapter, co-authored by Sue Mawdsley, in [Risk Management in Law Firms: Strategies for Safeguarding the Future](#), produced by the International Bar Association.



Recent articles

[Professional indemnity insurance: proceed with care](#)

[Consumer Contracts \(Information, Cancellation and Additional Charges\) Regulations 2013](#)

[Reputations at risk](#)

Events

Legal Malpractice & Risk Management Conference

Sue Mawdsley will be speaking on Statutory and Government Imposed Sanctions, Bribery and Money Laundering Regimes: Are Law Firms in the Crosshairs?

Law Society AML seminars

On behalf of the Law Society, Sue Mawdsley will be delivering various Anti-Money Laundering workshops across the country.

APIL Annual Conference 2015

Frank Maher will be delivering the seminar: 'Compliance: what you really need to know to avoid getting into trouble'

For more details see our [website](#).

Ugly issues: the regulation of Consumer Credit Activities

The SRA's consultation on this issue has now closed, and we await the outcome of discussions between the SRA and the FCA. But ugly issues have already arisen.

Most firms of solicitors conduct consumer credit activities incidentally when acting for clients, possibly without being aware that they are doing so. Until April 2014, solicitors were safe, because the Law Society had a group licence from the OFT. Following the replacement of the OFT by the FCA as the consumer credit regulator, solicitors face the prospect of regulation by the FCA for consumer credit activities. That would add very significantly to the regulatory burden.

Until October 2015, we are in a transitional period, to the extent that a firm's consumer credit activities are incidental: the firm continues to be regulated by the SRA, and must comply with the previously applicable guidance and procedures prescribed by the OFT.

So far so good, save for two issues. First, doubts have been raised as to what constitutes 'incidental' (c.f. section 332(4) of FSMA). Second, if the consumer credit activities are not incidental, then a firm already needs authorisation by the FCA. This could catch a firm whose practice is predominantly debt collection, but it could catch others as well. This exposes firms to the risk of potentially committing a criminal offence.

Conflicts of interests

The BBC's recent report of the barrister who found that he was instructed for both the prosecution and the defence may have led some to fear that government attempts to cut the legal aid bill had plumbed new depths.

We advise many leading UK, European and US firms on conflicts issues and also provide partner workshops.

Client-imposed terms, commonly through Outside Counsel Guidelines, are a recurrent problem for larger firms. For an article with some suggestions on tackling these, see an article by Frank Maher on our [website](#).

Ethics guidance: Protecting and maintaining client confidentiality

The SRA has issued a [guidance note](#) raising issues relating to multi-jurisdictional law firms, law firm mergers, and cloud computing.

Warning notice: Improper use of a client account as a banking facility

The SRA has issued a [warning notice](#). This is not solely affecting small firms.



RISK UPDATE

For further information on any of the above, please contact info@legalrisk.co.uk